

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 November 2023

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Ministry of Justice (the MoJ) regarding prison framework, policies and statistics. The MoJ disclosed some of the information, said some was accessible so exempt from disclosure under section 21 (Information accessible to applicant by other means) of FOIA and that the remainder was not held. In response to a subsequent request, the MoJ disclosed the information which had previously been withheld under section 21 of FOIA.
2. The Commissioner's decision is that, on the balance of probabilities, the MoJ does not hold the remaining information.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 2 July 2022, the complainant wrote to the MoJ and requested information in the following terms:

"Copies of the following detailed policy documents:

- HMPPS Offender Management in Custody Model (2019)
- Manage the Custodial Sentence Policy Framework
- National Standards 2021

- HMP Frankland's "agreed working arrangements" during Covid for OMU
  - Policy for Tiers as stated by [name redacted] as being "a community policy" but she fails to provide the name of the policy when requested in complaint 1A 735-22(A)
  - HMP OMUs local prison contract agreement (which states OMU (locally in Frankland) only require quarterly contact with clients) – point 2 complaint 1A 735-22(A)
  - Please provide any other local policies or Notice to Prisoners since November 2019 in HMP Frankland regarding changes to OMU policies."
5. The MoJ responded on 26 July 2022. It provided some information within the scope of the request, but refused to provide the remaining information citing section 21 of FOIA.
  6. Following an internal review, the MoJ wrote to the complainant on 4 October 2022. It stated that it was maintaining its application of section 21 and provided correct links to the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 11 July 2023 to complain about the way their request for information had been handled.
8. During the Commissioner's investigation, the MoJ confirmed that they had provided the complainant with most of the requested information. At this stage, the MoJ clarified that "HMP OMUs local prison contract agreement" was not actually held.
9. Since contacting the Commissioner, the complainant made a separate complaint for "HMPPS Offender Management in Custody Model (2019)", which was disclosed by the MoJ without the application of section 21. He will therefore not consider whether or not the MoJ was previously correct to cite section 21 of FOIA to withhold this document.
10. Whilst the Commissioner acknowledges that the complainant is not satisfied with the previous application of section 21, he has now received the requested information so the Commissioner will not consider the previous position. He would however encourage the MoJ to ensure responses are consistent when dealing with similar/identical requests for information.

11. The Commissioner considers the scope of his investigation is to determine whether, on the balance of probabilities, the MoJ holds the "HMP OMUs local prison contract agreement", the only document which remains undisclosed.

## **Reasons for decision**

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### **Section 1 – general right of access**

12. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
13. The MoJ confirmed that it had conducted manual searches on its internal intranet system for the HMP OMUs local prison contract agreement. The MoJ advised it used search terms such as "Offender Management Unit" and "HMP Frankland", however the requested information was not located.
14. The MoJ advised it then conducted an external search using the google and the Gov.uk website. It again confirmed that no information was located. The MoJ then received verbal confirmation from the head of the Offender Management Unit (OMU) that no such document was held.
15. The MoJ confirmed that there is no business purpose for the requested document to be held, nor is there a statutory requirement on the MoJ to retain the requested information. The MoJ also advised that there was no record of the requested information ever having been held or deleted/destroyed.
16. The Commissioner is satisfied that the MoJ has undertaken appropriate searches and liaised with appropriate personnel. Based on this he finds that, on the balance of probabilities, the MoJ does not hold the requested information.

### **Other matters**

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17. The Commissioner would like to take this time to remind the MoJ that internal reviews should be completed within 20 working days, but no longer than 40 working days. In the circumstances of this case, the

internal review was not completed until after 40 working days, which the Commissioner considers to be poor practice.

18. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual<sup>1</sup>.

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<sup>1</sup> [https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1\\_0.pdf](https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf)

## Right of appeal

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19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**